

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA10-521  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 April 2011

LILLIE MAE STEELMAN, EMPLOYEE  
Plaintiff,

v.

From The North Carolina  
Industrial Commission  
No. 681638

SELECT MEDICAL CORPORATION,  
EMPLOYER, and

THE PHOENIX INSURANCE COMPANY,  
CARRIER,  
Defendants.

Appeal by Defendants from the Opinion and Award of the Full Commission of the North Carolina Industrial Commission filed 25 January 2010. Heard in the Court of Appeals 3 November 2010.

*Daggett Shuler, Attorneys at Law, by Griffis C. Shuler, for plaintiff-appellee.*

*Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Gerald A. Stein, II and M. Duane Jones, for defendant-appellants.*

HUNTER, JR., Robert N., Judge.

Select Medical Corporation and The Phoenix Insurance Company ("Defendants") appeal the Industrial Commission's ("Commission") Opinion and Award entered 25 January 2010

granting Lillie Mae Steelman ("Plaintiff") temporary total disability ("TTD") compensation and compensation for medical treatment for her low back condition and pain management. Defendants argue there was a lack of competent medical evidence to support a compensable injury award for Plaintiff's lower back injury. For that reason, Defendants contend that Plaintiff should not receive compensation for an injury to her lower back and that she is not entitled to continuing disability. We conclude there is competent evidence to support the Commission's findings of fact and sufficient factual findings to support its award, and we therefore affirm the decision of the Industrial Commission.

### **I. Factual Background**

In 2002, Select Medical Corporation hired Plaintiff as a staff nurse at their Forsyth Medical Center facility. Plaintiff worked three twelve-hour shifts per week.

While at work, on 22 November 2006, Plaintiff slipped and fell on a waxed cement floor. As Plaintiff's right leg slipped underneath her left leg, she heard a "pop." She immediately felt excruciating pain in her right leg, right hip, and back.

Plaintiff was taken to the emergency room at Forsyth Medical Center. In the emergency room, she was found to have severe vertebral point tenderness over the lower lumbar spine and soft-tissue tenderness in the right lower lumbar area, as

well as tenderness in her right knee and thigh. An X-ray revealed degenerative disc disease at L4/5 and L5/S1 and grade 1 anterior subluxation at L3 on 4. The emergency room doctor recorded his clinical impression as: "Acute back pain: lumbar strain. Contusion right hip and right thigh. Sprained right knee. Fall." Plaintiff was referred to PrimeCare of Highland Oaks ("PrimeCare"), which she visited on 24 November 2006. After a second visit to PrimeCare on 27 November 2006, Plaintiff was referred to an orthopedic doctor.

Plaintiff visited Tri County Orthopedics on 6 December 2006, where a nurse practitioner examined her. At that time, Plaintiff did not complain of back pain, but only pain in her right lower extremity. On 15 February 2007, after two other visits with a nurse practitioner, Plaintiff met with Dr. C.S. Whitman, an orthopedic surgeon, whose opinion was that Plaintiff had a soft tissue injury to her right knee and might have reflex sympathetic dystrophy, also known as complex regional pain syndrome ("CRPS I"). After extensive therapy and surgery on Plaintiff's right leg, Dr. Whitman referred Plaintiff to Dr. David L. Spivey, a pain management doctor.

At Plaintiff's initial visit on 3 October 2007, Dr. Spivey agreed with Dr. Whitman that Plaintiff had CRPS I of the right lower extremity. A MRI of the lumbosacral spine performed on 6 November 2007 showed multilevel degenerative disc disease and

facet arthropathy with both central canal and bilateral foraminal stenosis at several levels. At that time, Dr. Spivey noted that the MRI results "bring[] up the possibility that some or all of her leg pain and other symptoms, particularly the instability, may be due to the spinal stenosis rather than CRPS I."

On 7 February 2008, Dr. Whitman noted that Plaintiff's symptoms could be consistent with atypical radicular pain pattern in the right lower extremity and that her symptoms may be related to lumbar disc syndrome. He referred her to Dr. William R. Brown, a neurosurgeon.

Plaintiff visited Dr. Brown on 1 May 2008, at which point his opinion was that she had "[b]ack pain secondary to lumbar degenerative disc disease, L4-5, L5-S1" and "[l]eg pain secondary to lumbar stenosis L4-5, L5-S1." Dr. Brown performed back surgery on Plaintiff on 13 June 2008. Although the surgery did not affect Plaintiff's back symptoms, there was progress with her leg pain, numbness, and tingling. She also experienced improved mobility.

At the time of his deposition in February 2009, Dr. Brown stated Plaintiff was not at maximum medical improvement and would not be able to work. Plaintiff testified at a hearing on 12 August 2009 that she was still taking pain medications and undergoing therapy. She also testified that she could not sit

or stand for long periods of time, and had to lay down and rest three or four times a day.

## II. Procedural Background

On 4 December 2006, Plaintiff completed a Form 18 providing notice of her accident and claim for worker's compensation. The Form 18 listed an injury to Plaintiff's right lower extremity and described severe pain in her right leg, right hip, and lower back.

On 9 March 2007, Select Medical Corporation filed a Form 60, admitting Plaintiff's right to compensation for the injury to her right knee. On 1 May 2007, Plaintiff filed an Amended Form 18, listing her right leg, left leg, back, left shoulder, and left arm as specific body parts involved in her injury.

The Phoenix Insurance Company ("Phoenix"), Select Medical Corporation's worker's compensation insurance carrier, paid for treatment associated with Plaintiff's right knee and left shoulder. Phoenix denied payment for all treatment related to Plaintiff's back, including a MRI of the lumbar spine ordered by Dr. Spivey on 31 October 2007. Dr. Spivey wrote a letter to Phoenix, stating:

Please note that the patient has not complained of back pain and I am *not* treating that. . . . I object to your denial of payment for the MRI of her lumbar spine. I believe records, including the MRI itself and subsequent electrodiagnostics confirming radiculopathy, support my decision to order

it. . . . I think that her leg symptoms are more likely related to lumbar spine disease.

On 12 February 2008, Dr. David V. Janeway conducted an independent medical evaluation of Plaintiff. He concluded Plaintiff had chronic right knee pain and gave his opinion that she should be able to return to work with no restrictions and should be rated at a 5% permanent partial disability of the leg. Dr. Janeway's examination was limited to Plaintiff's right knee.

On 26 February 2008, Plaintiff filed a Form 33 requesting a hearing concerning compensation for her back. On 17 June 2008, Defendants filed a Form 24 application to terminate compensation for Plaintiff's injury to her right knee, based on Dr. Janeway's release of Plaintiff to work. On 7 July 2008, Dr. Whitman concluded that Plaintiff was at maximum medical improvement with regard to her shoulder and knee injury and generally agreed with Dr. Janeway's recommendations.

An informal hearing on Defendants' Form 24 was held on 22 July 2008. Special Deputy Commissioner Christopher B. Rawls approved Defendants' application, allowing them to terminate compensation effective 7 July 2008, the date Dr. Whitman released Plaintiff to work. Deputy Commissioner Rawls recognized that Plaintiff claimed a back injury, but found that any issues associated with the back injury must be resolved by the filing of the Form 33. He found no evidence rebutting

Defendants' argument to terminate compensation for Plaintiff's right knee and left shoulder injuries. On 18 August 2008, Plaintiff filed a Supplemental Form 33, requesting a hearing to overrule Deputy Commissioner Rawls' Order.

On 16 July 2009, following a hearing and submission of evidence by both parties, Deputy Commissioner Robert J. Harris filed an Opinion and Award concluding that Plaintiff had a compensable aggravation of an existing low back condition. He awarded TTD compensation and compensation for medical treatment for Plaintiff's low back condition and pain management. He also awarded compensation for any treatment to Plaintiff's right leg, right knee, and left shoulder that had not already been covered. Defendants appealed to the Full Commission, and on 25 January 2010, an Opinion and Award was issued affirming the award of the deputy commissioner. The Full Commission made the following findings of fact:

28. Dr. Whitman testified that he could not connect the November 22, 2006 accident and Plaintiff's June 13, 2008 back surgery. He appeared to base this opinion on his not being aware of Plaintiff complaining of any symptoms suggestive of low back problems until September 11, 2007. However, he did allow that Plaintiff had trouble, during her visits with him, describing her symptoms. He also allowed that, in retrospect, the right calf and thigh pain that Plaintiff complained of to his nurse practitioner in December 2006, as well as her trouble with weight-bearing on the right in physical therapy at about that time, could have

suggested radiculopathy at that time. He also allowed that Plaintiff's right leg symptoms during his treatment of her, particularly her inability actively to dorsiflex her right foot in a standing position, could have indicated nerve root irritation. Dr. Whitman also testified that he could never, in any case, say that changes shown on imaging results were directly related to a specific traumatic event.

29. Dr. Whitman deferred to Dr. Brown with regard to Plaintiff's low back condition as of Dr. Brown's assumption of her treatment and following.

30. As Dr. Brown testified, within a reasonable degree of medical certainty, the November 22, 2006 fall aggravated Plaintiff's pre-existing lumbar degenerative disk disease, which brought her to such a pain level in her low back and legs that she had to consider surgery. As he further testified, Plaintiff's continuing complaints of low back symptoms are related to her fall. Dr. Brown based his causation opinion on Plaintiff's history of not having significant back and leg pain before the fall. If Plaintiff did not complain of low back symptoms for about one year after the fall, that would make Dr. Brown "suspicious" and would affect his opinion, but he agreed that Plaintiff's presentation with acute back pain (diagnosed as a lumbar strain) in the emergency room on the date of the accident was consistent with his causation opinion that Plaintiff sustained an aggravation of her pre-existing lumbar condition on that date. As Dr. Brown noted, it is difficult, clinically, to tell the difference between a lumbar strain and an aggravation of degenerative disk disease.

31. The Full Commission accords more weight to the causation testimony of Dr. Brown than to that of Dr. Whitman. Dr. Whitman



discounted Plaintiff's ongoing complaints of pain in her right leg from the beginning of her treatment, as well as her emergency room diagnosis, in forming his opinion. Dr. Brown's opinion has more merit, given the totality of Plaintiff's history and treatment.

. . . .

33. The November 22, 2006 fall resulted in four major medical conditions for Plaintiff: (1) CRPS in her right leg; (2) aggravation of degenerative changes in the meniscus of her right knee; (3) adhesive capsulitis of her left shoulder; and (4) aggravation of degenerative disc disease in her low back with radicular pain into her legs. The right knee meniscus condition and left shoulder condition appear to have reached MMI by July 7, 2008, but Plaintiff has continued to suffer pain and disability related to her right leg and low back conditions thereafter.

Based on their findings of fact, the Full Commission then made the following conclusions of law:

1. Plaintiff has shown that she sustained a compensable aggravation of her pre-existing low back condition in her injury by accident on November 22, 2006, and her low back condition is thus compensable. N.C. Gen. Stat. § 97-2(6).

2. Plaintiff has shown that she has been and remains totally disabled because of her low back condition since, at the latest, May 15, 2008, because she has produced medical evidence that she has been physically unable to work in any employment because of her low back condition since that date. As such, Plaintiff is entitled to TTD compensation from that date through the present and ongoing. N.C. Gen. Stat. § 97-29.

. . . .

4. Plaintiff is entitled to have Defendants pay for the medical treatment she has heretofore received for her compensable low back condition . . . .

. . . .

6. Plaintiff is also entitled to have Defendants authorize and pay for further medical treatment for her compensable right leg, right knee, left shoulder and low back conditions . . . .

Defendants appeal the Opinion and Award of the Full Commission.

### III. Standard of Review

In reviewing the Order and Award of the Full Commission, we are limited to a determination of "(1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are supported by the findings." *Barham v. Food World, Inc.*, 300 N.C. 329, 331, 266 S.E.2d 676, 678 (1980).

The Commission's findings of fact are conclusive on appeal if they are supported by any competent evidence. *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998). This Court "does not have the right to weigh the evidence and decide the issue on the basis of its weight.'" *Id.* (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)).

The evidence must be "viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Id.* at 681, 509 S.E.2d at 414. This is true even though other evidence would support contrary findings. *Id.*; see also *Calloway v. Mem'l Mission Hosp.*, 137 N.C. App. 480, 484, 528 S.E.2d 397, 400 (2000).

#### **IV. Argument**

Defendants argue there was no competent medical evidence to support the Full Commission's conclusion that Plaintiff's injury at work caused a compensable injury to her back. We do not find Defendants' argument persuasive in light of the following evidence presented to the Commission:

Immediately after Plaintiff fell, she felt "excruciating" pain in her right leg, right hip, and back. This pain was listed on her initial Form 18. The records from her visit to the emergency room immediately following the fall reflect her back pain, showing she had tenderness in her lower lumbar area. She was found to have "[a]cute back pain: lumbar strain."

Although Plaintiff did not continue to complain specifically about back pain, she did continue to have problems with her right lower extremity. Dr. Whitman confirmed that the calf pain and thigh pain she reported to him can be associated with lower back pain. Dr. Whitman stated, "I think that in

retrospect and looking at all the additional information that I have now, that it's certainly within reason to think that some of the symptoms in her leg could've come from her back."

Dr. Spivey also believed Plaintiff's pain could be "caused by a radiculopathy, a problem from her lumbar spine." He believed her radicular pain may have been masked by the CRPS I, and that it was likely that the two conditions co-existed. At her 17 December 2007 visit, Dr. Spivey indicated Plaintiff's stenosis "has been pre-existent, but may have been exacerbated by the injury sustained at work since the patient maintains that she was asymptomatic until that time."

Dr. Brown expressed his opinion to a reasonable degree of medical certainty that Plaintiff's fall aggravated her pre-existing degenerative disc disease. "When a pre-existing, nondisabling, non-job-related condition is aggravated or accelerated by an accidental injury arising out of and in the course of employment . . . the employer must compensate the employee for the entire resulting disability even though it would not have disabled a normal person to that extent." *Morrison v. Burlington Indus.*, 304 N.C. 1, 18, 282 S.E.2d 458, 470 (1981) (emphasis removed).

Dr. Brown's opinion on causation was based not only upon Plaintiff's history of not having back pain prior to the fall, but also his 35 years of experience with patients having similar

symptoms. Dr. Brown stated, "this is some everyday type of problem that I see in somebody who has probably had [degenerative disc disease] for a while and then becomes symptomatic." He also based his opinion on his knowledge that "the aggravation of that arthritis can cause increased pressure on the nerve root, which can then become symptomatic, even though it had been there before." Dr. Brown did not present any alternative theories of the cause of Plaintiff's pain.

Defendants argue that Dr. Brown's testimony was purely speculative, based on the following exchange between Defendants' counsel and Dr. Brown:

Q. Does it affect your opinion in any way -- or let me back up. You have formulated your opinion based on Ms. Steelman's subjective representations to you. Does it affect your opinion in any way that she did not make those same representations to Dr. Whitman for about a year after her fall of November 22nd, 2006?

A. In other words, if somebody else that had been questioning her closely said that she didn't complain of back and leg pain, and all of a sudden she shows up at my office and says she's had back and leg pain ever since of injury, yeah, I would think that would be suspicious.

The question presented by Defendants' counsel, however, implies that Plaintiff did not complain of back pain or leg pain for almost a year after the fall, which does not align with the evidence in this case. Plaintiff reported back pain and leg

pain immediately following the fall, as reflected in the emergency room records. She continued to have leg pain, which three physicians testified could have been radicular pain related to her lower back problems. Plaintiff did not suddenly allege back and leg pain for the first time more than a year after the accident. We find further support for our conclusion in the following testimony by Dr. Brown:

Q. Dr. Brown, I just have one follow-up question, and that is: If, on the date of the injury, specifically November 22nd, 2006 when Ms. Steelman presented to the emergency room after her fall, if she complained of back pain and was diagnosed as having low back pain, lumbar strain, would that be consistent with an aggravation of a preexisting condition?

A. Yes. You can't tell the difference between lumbar strain and aggravation of degenerative disk disease.

Q. And so would the report immediately after the injury of low back pain -- would that then support your previously stated opinions concerning the relation between the injury and her back condition?

A. It would support it, yes.

As Dr. Brown gave his opinion to a reasonable degree of medical certainty and confirmed that opinion when asked about Plaintiff's emergency room records, his testimony was not speculative.

Defendants also argue that Dr. Brown's testimony was based solely on the doctrine of *post hoc ergo propter hoc*, and as such

is not competent evidence. *Post hoc ergo propter hoc* ("after this, therefore because of this") describes the erroneous conclusion that because one event happened before another, the first event must have caused the second one. An example of this kind of circular reasoning was examined by our Supreme Court in *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 232, 538 S.E.2d 912, 916 (2000).

In *Young*, the physician testified the only evidence he had of the plaintiff's work-related accident causing fibromyalgia was that she did not have fibromyalgia prior to the accident, but did have it following the accident. *Id.* The physician testified that there were other possible causes for fibromyalgia for which the plaintiff had not been tested. *Id.* at 231, 538 S.E.2d at 915. The Court found the physician's testimony speculative and thus not competent evidence, as it was based solely on *post hoc ergo propter hoc*. *Id.* at 233, 538 S.E.2d at 916 ("In a case where the threshold question is the cause of a controversial medical condition, the maxim of '*post hoc, ergo propter hoc*,' is not competent evidence of causation.").

Unlike the physician in *Young*, Dr. Brown's opinion is not based solely on the doctrine of *post hoc ergo propter hoc*, but rather on Plaintiff's symptoms, Dr. Brown's experiences with other patients, and his medical expertise. Compare *Young*, 353 N.C. 227, 538 S.E.2d 912, with *Legette v. Scotland Mem'l Hosp.*,

181 N.C. App. 437, 456, 640 S.E.2d 744, 756 (2007) (finding competent evidence where the physician testified the description of the accident was consistent with the type of trauma that would be associated with the plaintiff's medical condition).

Evidence from the medical records, the testimony of Plaintiff, and the depositions of Drs. Whitman, Spivey, and Brown is adequate to support the Commission's findings of fact that the 22 November 2006 fall caused the aggravation of Plaintiff's degenerative disc disease in her low back with radicular pain into her legs. As we find evidence to support the Commission's findings of fact, we need not address alternative theories or evidence that would go against causation. See *Calloway*, 137 N.C. App. at 484, 528 S.E.2d at 400 ("[T]he findings of fact are conclusive on appeal so long as they are supported by any competent evidence, even if other evidence would support contrary findings."). The findings of fact are sufficient to support the Full Commission's conclusions of law that Plaintiff sustained a compensable aggravation of her pre-existing low back condition.

Defendants also argue that Plaintiff is not entitled to continuing disability, as she was not injured at work. For the reasons stated above, we disagree. We also note that although Drs. Janeway and Whitman both suggested Plaintiff was ready to return to work, their opinions were limited to her knee and



shoulder injuries. More recently, Dr. Brown, stated that Plaintiff was not at maximum medical improvement and that she should not work, as she had not completed her healing and was still on medications. Therefore, we conclude there is competent evidence to support the Commission's Award.

#### **V. Conclusion**

We find there is competent evidence to support the Commission's findings of fact and sufficient factual findings to support its award. The Full Commission did not err in awarding Plaintiff compensation and continuing disability as a result of her 22 November 2006 accident.

Affirmed.

Judges STEELMAN and STEPHENS concur.

Report per Rule 30(e).